

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 16-0170 CAF**

<b>VICTORIA VALVERDE,</b>	§	<b>BEFORE THE OFFICE</b>
<b>Complainant</b>	§	
<b>v.</b>	§	<b>OF</b>
	§	
<b>FORD MOTOR COMPANY,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

Victoria Valverde (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her 2014 Ford Focus. Complainant asserts that the vehicle is defective because it stalls, shakes, lurches, and jerks. In addition, Complainant has been left stranded because the vehicle would not start. Finally, the vehicle's engine will sometimes keep running after the key has been turned to the off position. Ford Motor Company (Respondent) argued that the vehicle has been repaired, does not have any defects, and that no relief is warranted. The hearings examiner concludes that the vehicle has been repaired, does not have an existing warrantable defect, and Complainant is not eligible for relief.

**I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION**

Matters of notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened and the record was closed on June 8, 2016, in Odessa, Texas, before Hearings Examiner Edward Sandoval. Complainant, Victoria Valverde, represented herself at the hearing. Respondent was represented by Maria Diaz, Consumer Affairs Legal Analyst.

**II. DISCUSSION**

**A. Applicable Law**

The Lemon Law provides, in part, that a manufacturer of a motor vehicle must repurchase or replace a vehicle complained of with a comparable vehicle if the following conditions are met. First, the manufacturer is not able to conform the vehicle to an applicable express warranty by repairing or correcting a defect after a reasonable number of attempts.<sup>1</sup> Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle.<sup>2</sup> Third, the manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.<sup>3</sup> Fourth, the owner must have mailed written notice of

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<sup>1</sup> Tex. Occ. Code § 2301.604(a).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

the alleged defect or nonconformity to the manufacturer.<sup>4</sup> Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.<sup>5</sup>

In addition to the five conditions, a rebuttable presumption exists that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty if the same nonconformity continues to exist after being subject to repair four or more times and: (1) two of the repair attempts were made in the 12 months or 12,000 miles, whichever comes first, following the date of original delivery to the owner; and (2) the other two repair attempts were made in the 12 months or 12,000 miles, whichever comes first, immediately following the date of the second repair attempt.<sup>6</sup>

## **B. Complainant's Evidence and Arguments**

Complainant purchased a new 2014 Ford Focus from Sewell Ford (Sewell) in Odessa, Texas on May 23, 2014, with mileage of 8 at the time of delivery.<sup>7,8</sup> Respondent provided a bumper-to-bumper warranty for the vehicle for three (3) years or 36,000 miles, whichever comes first. In addition, Respondent's powertrain warranty provides coverage for the vehicle's powertrain for five (5) years or 60,000 miles. On the date of hearing the vehicle's mileage was 37,171. At the time of hearing, the vehicle's bumper-to-bumper warranty had expired.

Complainant testified that at times the vehicle stalls, shakes, lurches, and jerks. She has been left stranded because the vehicle would not start. In addition, the vehicle's engine will sometimes keep running after the key has been turned to the off position.

In October of 2015, Complainant was driving the vehicle when it began lurching and stalling when stopped at a stop sign. When Complainant attempted to accelerate from the stop sign, the vehicle stalled and lurched into traffic. In addition, the vehicle began to shake and make an unusual noise from the engine compartment. The vehicle was shaking so badly that passengers could feel it. Also, the vehicle's check engine light (CEL) illuminated. Complainant took the vehicle to Sewell for repair on October 7, 2015. Sewell's service technician verified that the vehicle was shaking when it was being driven and determined there was a misfire on one of the

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<sup>4</sup> Tex. Occ. Code § 2301.606(c)(1).

<sup>5</sup> Tex. Occ. Code § 2301.606(c)(2).

<sup>6</sup> Tex. Occ. Code § 2301.605(a)(1)(A) and (B). Texas Occupations Code § 2301.605(a)(2) and (a)(3) provide alternative methods for a complainant to establish a rebuttable presumption that a reasonable number of attempts have been undertaken to conform a vehicle to an applicable express warranty. However, § 2301.605(a)(2) applies only to a nonconformity that creates a serious safety hazard, and § 2301.605(a)(3) requires that the vehicle be out of service for repair for a total of 30 or more days in the 24 months or 24,000 miles, whichever occurs first, following the date of original delivery to the owner.

<sup>7</sup> Complainant Ex. 1, Motor Vehicle Retail Installment Sales Contract dated May 23, 2014.

<sup>8</sup> Complainant Ex. 2, Odometer Disclosure Statement dated May 23, 2014.

engine's cylinders (#4 cylinder).<sup>9</sup> The technician upon further examination found that the vehicle's ignition coil was causing the engine to misfire.<sup>10</sup> He replaced the ignition coil and concluded that the vehicle was repaired.<sup>11</sup> The vehicle's mileage on this occasion was 28,244.<sup>12</sup> The vehicle was in Sewell's possession overnight during this repair. Complainant was provided with a rental vehicle while her vehicle was being repaired.

Soon after receiving the vehicle back from the dealer it again started shaking when being driven. In addition, the vehicle would not turn off after Complainant took the key out of the ignition. It would sometimes take up to five (5) minutes for the engine to stop running after the key was turned to off. Complainant also experienced a problem when she was driving the vehicle on the highway, where it stalled prior to accelerating and the CEL illuminated. The vehicle did not die, but the incident concerned Complainant. As a result, she took the vehicle to Sewell on October 12, 2015, in order to have the issues addressed. Sewell's service technician verified that the vehicle's engine would continue to run after the key was out of the ignition.<sup>13</sup> The technician replaced a relay in order to address the issue.<sup>14</sup> However, the technician was unable to verify Complainant's concern about the vehicle stalling or the CEL illuminating.<sup>15</sup> The vehicle's mileage on this occasion was 28,320.<sup>16</sup> The vehicle was in Sewell's possession for about ten (10) days. Complainant was provided with a rental vehicle while her vehicle was being repaired.

Complainant testified that the issue with the vehicle's engine running after the key had been turned to off recurred on at least five occasions. Also, while driving the vehicle, Complainant noticed that it would not accelerate over 20 mph until the engine's RPM's exceeded 4,500. At which point, the vehicle would jerk and drive normally. Complainant took the vehicle to Sewell for repair on October 29, 2015. The technician verified the concern and determined that the vehicle's transmission control module (TCM) needed replacement.<sup>17</sup> As well as replacing the TCM, the technician replaced the vehicle's clutch assembly.<sup>18</sup> The vehicle's mileage on this occasion was 28,535.<sup>19</sup> The vehicle was in the dealer's possession for about four (4) days on this occasion. Complainant was provided with a rental vehicle while her vehicle was being repaired.

Complainant stated that in December of 2015, the vehicle failed to start. Complainant had the vehicle towed to Sewell for repair on December 22, 2015. Complainant also indicated to

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<sup>9</sup> Complainant Ex. 3, Repair Order dated October 7, 2015.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Complainant Ex. 4, Repair Order dated October 12, 2015.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Complainant Ex. 5, Repair Order dated October 29, 2015.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

Sewell's service advisor that the vehicle's CEL had illuminated and the vehicle would jerk when she was driving it.<sup>20</sup> Sewell's service technician determined that the vehicle's ignition relay was sticking and replaced it.<sup>21</sup> In addition, the technician replaced the vehicle's battery.<sup>22</sup> The vehicle's mileage on this occasion was 30,033.<sup>23</sup> The vehicle was in the dealer's possession for four (4) days. Complainant was provided with a rental vehicle while her vehicle was being repaired.

Complainant drove the vehicle over the holidays to Plains, Texas to visit her family. While in Plains, the vehicle's engine again continued to run after the key was turned to off. In addition, the vehicle would not crank or start even though Complainant attempted to jump start it. Complainant had to have the vehicle towed to Sewell for repair. The vehicle was delivered to the Sewell dealership on January 14, 2016. Sewell's technician found that a connector to the body control module (BCM) was full of corrosion.<sup>24</sup> The technician cleaned the connectors at the BCM and replaced and reprogrammed the BCM.<sup>25</sup> The vehicle's mileage on this occasion was 30,169.<sup>26</sup> The vehicle was in Sewell's possession for repair for 25 days on this occasion.<sup>27</sup> Complainant was provided with a rental vehicle while her vehicle was being repaired.

On February 3, 2016, Complainant wrote a letter to Respondent advising them of her dissatisfaction with the vehicle.<sup>28</sup> Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on February 9, 2016.<sup>29</sup>

Complainant testified that Respondent's representative contacted her and scheduled a final repair attempt on the vehicle. The final repair attempt took place on March 17, 2016, at Sewell. Complainant was provided with a rental vehicle while the final repair attempt took place. Respondent's technical representative upon inspecting Complainant's vehicle verified that the vehicle had a clutch shudder and that the vehicle's clutch assembly needed replacement.<sup>30</sup> The assembly was replaced and the vehicle returned to Complainant on or about March 18, 2016.<sup>31</sup>

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<sup>20</sup> Complainant Ex. 6, Repair Order dated December 22, 2015.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Complainant Ex. 7, Repair Order dated January 14, 2016.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Complainant Ex 9, Letter to Ford Motor Company dated February 3, 2016.

<sup>29</sup> Complainant Ex. 8, Lemon Law Complaint dated February 9, 2016. Complainant signed and dated the complaint on February 4, 2016. However, the complaint was not received by the Texas Department of Motor Vehicles until February 9, 2016, which is the effective date of the complaint.

<sup>30</sup> Complainant Ex. 10, Repair Order dated March 17, 2016.

<sup>31</sup> *Id.*

Complainant testified that the vehicle is operating okay for now. She says that she will occasionally feel a small shudder, but that her primary concern is that she will have a problem with the vehicle in the future. She's not experienced any other problems with the vehicle's engine failing to turn off since December of 2015. Complainant has not experienced any hesitation or stalling when driving the vehicle since the vehicle was last repaired.

During cross examination, Complainant testified that she has not experienced a no crank, no start issue with the vehicle since prior to the last repair.

### **C. Respondent's Evidence and Arguments**

Maria Diaz, Consumer Affairs Legal Analyst, testified for Respondent. Ms. Diaz first became involved in this case when she was forwarded Complainant's letter outlining her dissatisfaction with the vehicle. Ms. Diaz spoke to Complainant on February 17, 2016, at which time Complainant indicated that the vehicle had been repaired and that she did not want a final repair attempt on the vehicle. However, on March 10, 2016, Complainant contacted Ms. Diaz and indicated that she did want a final repair attempt on the vehicle because it was acting up. Ms. Diaz scheduled the final repair attempt for March 16, 2016, at Sewell.

Ms. Diaz testified that Zachary LaTour, field service engineer, performed the final repair attempt on Complainant's vehicle on the scheduled date. Mr. LaTour inspected the vehicle for the issues of the engine running when the key was out of the ignition, the vehicle not starting or cranking, the vehicle's lack of power and hesitation, jerking, and stalling.<sup>32</sup> Mr. LaTour verified that there was an issue with the vehicle hesitating, jerking, and lacking power.<sup>33</sup> He determined that the problems were being caused by the vehicle's transmission clutch assembly and had it replaced.<sup>34</sup> No other work was performed at the time.

Ms. Diaz stated that Complainant called her on March 23, 2016, and indicated that the vehicle was driving well. No other repairs have been performed on the vehicle since March of 2016.

Ms. Diaz also testified that the vehicle had a three (3) year or 36,000 mile bumper-to-bumper warranty and a five (5) year or 60,000 mile powertrain warranty. In addition, Complainant was provided with a ten (10) year or 150,000 mile warranty for the vehicle's transmission control module.

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<sup>32</sup> Respondent Ex. 1, FSE Vehicle Inspection Report dated March 16, 2016, p. 1.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

#### D. Analysis

Under the Lemon Law, Complainant bears the burden of proof to establish by a preponderance of evidence that a defect or condition creates a serious safety hazard or substantially impairs the use or market value of the vehicle. In addition, Complainant must meet the presumption that the manufacturer was given a reasonable number of attempts to repair or correct the defect or condition to conform the vehicle to an applicable express warranty. Finally, Complainant is required to serve written notice of the defect or nonconformity on Respondent, who must be allowed an opportunity to cure the defect. If each of these requirements is met and Respondent is still unable to conform the vehicle to an express warranty by repairing the defect or condition, Complainant is entitled to have the vehicle repurchased or replaced.

Complainant purchased the vehicle on May 23, 2014, and presented the vehicle to an authorized dealer of Respondent for repair due to the vehicle stalling, shaking, lunging, and jerking; failing to start; and the engine continuing to run after the key has been turned to the off position on the following dates: October 7, 2015; October 12, 2015; October 29, 2015; December 22, 2015; and January 14, 2016. The vehicle was repaired during the final repair attempt which took place on March 17, 2016, and Complainant indicated that she has not experienced any other problems with the vehicle since that date.

Occupations Code § 2301.603 provides that “a manufacturer, converter, or distributor shall make repairs necessary to conform a new motor vehicle to an applicable manufacturer’s converter’s or distributor’s express warranty.” Relief under the Lemon Law can only be granted if the manufacturer of a vehicle has been unable to conform a vehicle to the manufacturer’s warranty. If a vehicle has been repaired then no relief can be possible. A loss of confidence in the vehicle when a defect has been cured does not warrant relief under the Lemon Law. The Lemon Law requires that in order for a vehicle to be determined to be a “lemon” the “nonconformity continues to exist” after the manufacturer has made repeated repair attempts.<sup>35</sup> In the present case, the evidence reveals that the vehicle has been fully repaired and that it currently conforms to the manufacturer’s warranty. Therefore, the hearings examiner finds that there is no defect with the vehicle that has not been repaired and, as such, repurchase or replacement relief for Complainant is not warranted.

Respondent’s express warranty applicable to Complainant’s vehicle provides bumper-to-bumper coverage for three (3) years or 36,000 miles whichever comes first. In addition, the powertrain warranty provides coverage for five (5) years or 60,000 miles. On the date of hearing, the vehicle’s mileage was 37,171 and the bumper-to-bumper warranty has expired. However, the vehicle’s powertrain warranty is still in effect.

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<sup>35</sup> Tex. Occ. Code § 2301.605.

Complainant's request for repurchase or replacement relief is denied.

### III. FINDINGS OF FACT

1. Victoria Valverde (Complainant) purchased a new 2014 Ford Focus on May 23, 2014, from Sewell Ford (Sewell) in Odessa, Texas, with mileage of 8 at the time of delivery.
2. The manufacturer of the vehicle, Ford Motor Company (Respondent), issued a bumper-to-bumper warranty for the vehicle for three (3) years or 36,000 miles, whichever occurs first and a separate powertrain warranty for five (5) years or 60,000 miles.
3. The vehicle's mileage on the date of hearing was 37,171.
4. At the time of hearing the vehicle's bumper-to-bumper warranty had expired. However, the powertrain warranty is still in effect.
5. Complainant experienced problems with the vehicle stalling, shaking, lunging, and jerking inordinately, failing to start, and continuing to run after the key had been turned to the off position.
6. Complainant took the vehicle to Sewell for repair on the following dates:
  - a. October 7, 2015, at 28,244 miles;
  - b. October 12, 2015, at 28,320 miles;
  - c. October 29, 2015, at 28,535 miles;
  - d. December 22, 2015, at 30,033 miles; and
  - e. January 14, 2016, at 30,169 miles.
7. On October 7, 2015, Sewell's service technician replaced the vehicle's ignition coil in order to address Complainant's concern regarding the vehicle shaking when the vehicle's engine was turned on.
8. On October 12, 2015, Sewell's service technician replaced a relay to address the issue of the engine continuing to run after the key was turned to the off position.
9. On October 29, 2015, Sewell's technician replaced and reprogrammed the vehicle's transmission control module and clutch assembly in order to address the issues of the vehicle lunging when being driven and failing to accelerate until the engine's RPM's exceeded 4,500.

10. On December 22, 2015, Sewell's technician replaced the vehicle's battery and ignition relay to address the issues of the vehicle's failure to start and check engine light illuminating.
11. On January 14, 2016, Sewell's technician replaced the vehicle's body control module (BCM) and cleaned connectors to the BCM in order to address the issue of the vehicle failing to start.
12. Respondent's field service engineer, Zachary LaTour, performed a final repair attempt on the vehicle on March 16, 2016, at Sewell.
13. During the final repair attempt, Mr. LaTour determined that the vehicle's transmission clutch assembly needed replacement in order to address Complainant's concerns regarding the vehicle hesitating and jerking and the vehicle's lack of power.
14. The vehicle has been repaired and Complainant has not had any other problems with it since March of 2016.
15. On February 19, 2016, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
16. On March 28, 2016, the Department's Office of Administrative Hearings issued a notice of hearing directed to Complainant and Respondent, giving all parties not less than 10 days' notice of hearing and their rights under the applicable rules and statutes. The notice stated the time, place and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; particular sections of the statutes and rules involved; and the matters asserted.
17. The hearing in this case convened and the record was closed on June 8, 2016, in Odessa, Texas, before Hearings Examiner Edward Sandoval. Complainant, Victoria Valverde, represented herself at the hearing. Respondent was represented by Maria Diaz, Consumer Affairs Legal Analyst.

#### IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-2301.613 (Lemon Law).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including

- the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. Tex. Occ. Code § 2301.704.
3. Complainant timely filed a complaint with the Department. Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202.
  4. The parties received proper notice of the hearing. Tex. Gov't Code §§ 2001.051, 2001.052; 43 Tex. Admin. Code § 215.206(2).
  5. Complainant bears the burden of proof in this matter.
  6. Complainant failed to prove by a preponderance of the evidence that Respondent was unable to conform the vehicle to an express warranty by repairing or correcting a defect or condition that presents a serious safety hazard or substantially impairs the use or market value of the vehicle. Tex. Occ. Code § 2301.604.
  7. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code §§ 2301.204, 2301.603.
  8. Complainant's vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.

### ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for repurchase relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED**.

**SIGNED July 6, 2016**

  
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**EDWARD SANDOVAL**  
**CHIEF HEARINGS EXAMINER**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
**TEXAS DEPARTMENT OF MOTOR VEHICLES**